**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**MISCELLANEOUS PETITION NO.25 OF 2003**

**IN**

**PETITION NO.89 OF 2002**

Mrs Shyama Krishna Shama alias Shyama Nandlal Lokhande ...Petitioner

v/s

Smt Gangubai Nandlal Lokhande and others ...Respondent

Mr A.S. Karwande for Petitioner.

Mr Rajiv Matkar for Respondent No.1.

Mr Sachin Sangare for Respondent Nos.2 and 3.

**CORAM : D.K. DESHMUKH J.**

**DATE : 14TH JULY 2006.**

**P.C.** :-

1. This petition is filed for revocation of the probate of the will granted by this Court. The name of the deceased is Anneal S. Lokhande. The date of his death is 21st December 1995. The petitioner who claims to be the daughter of the deceased has filed this petition for revocation of the probate on the ground that though she is daughter of the deceased, she was not cited as heir in the petition. The respondent disputes the fact that the petitioner is daughter of the deceased Nandlal. The petitioner has produced copies of several documents like school leaving certificate, marriage certificate, ration-card etc. to show that the name of her father was Nandlal Lokhande. In my opinion, what is stated by the petitioner in paragraph 4 of the petition if read with the document of passport which is produced by the petitioner herself, destroys her case that she is daughter of Nandlal Lokhande. After referring to the ration-card, the petitioner states thus :-

> "The third name from the top in the Exh.'C' is 'Smt Janabai'. The petitioner herein called as 'Akka' (a mother) but in fact and in reality the Akka is real sister of the deceased. The petitioner states that the

> deceased, the Appa has given the intimation to the petitioner during his life time that the mother of petitioner did not like drinking habit of the petitioner, that is why the mother of the petitioner deserted the deceased within one month after the birth of the petitioner, since then the 'Akka' is taking care of the petitioner."

. The petitioner thus states that the petitioner was brought up by Akka whose real name is Janabai and this Janabai was real sister of deceased Nandlal. Perusal of the passport produced by the petitioner herself shows that the name of the petitioner's mother is Janabai nandlal Lokhande. Thus, according to the entry on the passport, Janabai is mother of the deceased. According to the petitioner herself, Janabai was real sister of the deceased, therefore, she cannot be wife of the deceased and therefore, the petitioner cannot be the daughter of the deceased. What is interesting is that the petitioner has not produced her birth certificate, has not disclosed where the petitioner was born. Though the petitioner has produced marriage certificate, the petitioner has not even averred that at the time of marriage, deceased testator was present and that he performed the marriage ceremony and rituals which are to be performed by a Hindu father

at the wedding of his daughter. So far as the school leaving certificate is concerned, the petitioner has not averred that the entries were made in the school register on the basis of the information given by the deceased testator. The application form that might have been filled for getting the petitioner admitted in the school is also not produced. Thus, on the one hand, there is no document produced on record which can show that the petitioner is daughter of deceased Nandlal, on the other hand, taking averments made in the petition together with entry made in the passport clearly indicate that the petitioner is not the daughter of the deceased. The petitioner does not have any locus to apply for revocation of the will of the deceased. Petition is therefore disposed off. The petitioner is directed to pay costs of this petition to the respondents. The cost is quantified at Rs.25,000/-.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

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